

**REMARKS/ARGUMENTS**

This reply is fully responsive to the Office Action dated 15 DECEMBER 2008, and is filed within TWO - (2) months following the mailing date of the Office Action. It should  
5 be noted that this response is filed within TWO MONTHS of the mailing date of the  
Final Office Action and therefore, if applicable, warrants an Advisory Action.

**Objection/Rejection Summary:**

This application has been carefully reviewed in light of the Office Action of December  
10 15, 2008, wherein:

A. Claims 1-39 were rejected under 35 U.S.C. § 102(a) as being anticipated by ElBatt et al. ("Power Management for Throughput Enhancement in Wireless Ad-hoc Networks," IEEE International Conference on Communications, pp 1506-1513, Vol. 3, June 18-22, 2000, hereinafter referred to as the "ElBatt article").

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**Claim Rejections - 35 USC § 102(a)**

A. In the current Office Action, the Examiner rejected Claims 1-39 under 35 U.S.C. § 102 (a) as being clearly anticipated by the ElBatt article.

20 The Examiner stated that the declaration filed by the Applicants on September 16, 2008 and the addendum filed October 6, 2008, signed by the inventors, were ineffective to overcome the ElBatt et al. reference, and accordingly, THIS ACTION WAS MADE FINAL. Specifically, the Examiner stated that the evidence submitted by the Applicants was insufficient to establish diligence from a date prior to the date of reduction to  
25 practice of the ElBatt article. The Examiner further stated that the Applicants had not submitted the "Appendix A" showing a first completed written description of the invention by April 20, 1999, as indicated in the declaration under 37 CFR 1.131 filed on September 16, 2008 and October 6, 2008. Then the Examiner suggested that the Applicants should provide the Appendix A (referring to the original Invention Disclosure  
30 dated and signed by the inventors) or an exhibit that is sufficient to establish diligence from a date prior to the date of reduction to practice of the ElBatt article.

**The Applicants apologize to the Examiner for the missing Invention Disclosure dated and signed by the inventors (referring to Appendix A).**

The Applicants believe that the Invention Disclosure that was submitted with the previous response and  
5 declarations, but was somehow misplaced and, therefore, the Applicants are currently resubmitting this original Invention Disclosure signed by the inventors on August 19, 1999, along with the current revised response.

Based on the submission of the Invention Disclosure (i.e., Appendix A), the Applicants  
10 believe that the Examiner has failed to establish a single reference that teaches or enables each of the elements of the claimed invention. In order to establish a prima facie case of anticipation, the Examiner must set forth an argument that provides (1) a single reference (2) that teaches or enables (3) each of the claimed elements (as arranged in the claim) (4) either expressly or inherently and (5) as interpreted by one of ordinary skill in the art. All  
15 of these factors must be present, or a case of anticipation is not met. Thus, the Applicants submit that the Examiner has failed to set forth a prima facie case of anticipation because the Applicants firmly believe that that the present invention was conceived prior to the publication date of the ElBatt article, and as such, the ElBatt article should not be considered prior art with respect to the present invention.

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**The ElBatt article should not be considered prior art with respect to the present invention**

The Applicants submit that the present invention is a continuation of, and thus claims the benefit of priority to, US Patent Application No. 09/708,271 and US Patent No.  
25 6,735,448, filed in the United States on November 7, 2000, and title "Power Management for Throughput Enhancement in Wireless Ad-Hoc Networks."

The Applicants further submit that the ElBatt article is an academic publication that was published on the IEEE International Conference on Communications, on June, 2000. Furthermore, the Applicants submit that the present invention was conceived prior to the

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publication date of the ElBatt article. As sworn to in the attached 37 CFR 1.131 declaration signed by the inventors, the present invention was invented at least as early as April 19, 1999 (more than a year before the publication date of the ElBatt article) when the first named inventor, Srikanth Krishnamurthy, first completed a conception of the invention, and when a finalized Invention Disclosure was signed by the inventors and stamped by HRL Laboratories, LLC (as evidenced by the Invention Disclosure, included herewith as Appendix A).

Because the present invention is a continuation of US Patent No. 6,735,448 and thus claims the benefit of priority to the filing date of November 7, 2000, the Applicants further submit that the present invention was diligently pursued until at least the benefit of priority filing date of November 7, 2000 and until the continuation filing date of April 1, 2004.

**Because the present invention was invented at least as early as April 19, 1999, the present invention was conceived prior to the publication date of the ElBatt article (June 2000). Thus, the Applicants believe that with the attached §1.131 declaration, the ElBatt article can no longer be considered prior art with respect to the present invention.**

Therefore, the Applicants respectfully request that the Examiner withdraw this rejection under 35 U.S.C. § 102 (a) and provide for timely allowance of Claims 1-39.

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**Closing Remarks:**

The Applicants respectfully submit that, in light of the above remarks, the application and all pending claims are now in allowable condition. Therefore, reconsideration is respectfully requested. Accordingly, early allowance and issuance of this application is respectfully requested.


In the event that the Examiner wishes to discuss any aspect of this response, or believes that a conversation with either the Applicants or Applicants' representative would be beneficial the Examiner is encouraged to contact the undersigned at the telephone number indicated below.

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 50-2691. In particular, if this response is not timely filed, the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136(a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 50-2691.

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Respectfully submitted,

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Date

  
Cary Tope-McKay  
Registration No. 41,350

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Cary Tope-McKay  
TOPE-MCKAY & ASSOCIATES  
23852 Pacific Coast Highway #311  
Malibu, CA 90265  
Tel: 310-589-8158  
Mobile: 310-383-7468  
Fax: 310-943-2736  
E-mail: [cmckay@topemckay.com](mailto:cmckay@topemckay.com)

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